

Item No: \_\_\_\_\_

Prepared By: Gloria Kelly  
Real Estate Services

Commissioner: \_\_\_\_\_

Approved by: Lisa Kelly  
County Attorney

**RESOLUTION APPROVING THE LEASE OF 3,762 SQUARE FEET OF COUNTY OWNED OFFICE SPACE LOCATED ON THE 3<sup>RD</sup> FLOOR OF 150 WASHINGTON AVENUE, TO SHELBY COUNTY EMPLOYEES FEDERAL CREDIT UNION FOR ITS USE IN CONDUCTING THE REGULAR, USUAL AND CUSTOMARY BUSINESS OF A CREDIT UNION; AND TO AUTHORIZE THE SHELBY COUNTY MAYOR TO EXECUTE THE LEASE AGREEMENT. SPONSORED BY COMMISSIONER WYATT BUNKER**

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**WHEREAS**, Shelby County owns certain improved real property known as 150 Washington Avenue located within the City of Memphis, Shelby County, Tennessee, which property being further identified as Shelby County Tax Parcel No. 00202100002; and

**WHEREAS**, The County has terminated the lease arrangement with Shelby County Employees Federal Credit Union for the 4,862 square feet of office space it occupied on the 4<sup>th</sup> floor of 157 Poplar Avenue , in an effort to vacate the building for subsequent demolition; and

**WHEREAS**, Shelby County Employees Federal Credit Union has requested the County to lease it 3,762 square feet of County owned office space on the 3<sup>rd</sup> floor of 150 Washington Avenue for its use in conducting regular, usual and customary business of a credit union for an initial term of five (5), with the option to extend the initial term for one (1) renewal term of five (5) years upon written mutual consent of all parties, at an initial term rent in the amount of \$ 120,000.00 and at a renewal term rent in the amount of \$ 150,000.00, under the terms and conditions stated in the attached Lease Agreement, which is hereby incorporated by reference; and

**WHEREAS**, It is deemed to be in the best interest of Shelby County to lease the hereinabove said 3,762 square feet of County owned office space on the 3<sup>rd</sup> floor of 150 Washington Avenue to Shelby County Employees Federal Credit Union for its use in conducting regular, usual and customary business of a credit union, under the terms and conditions stated in the aforescribed Lease Agreement.

**NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, That the aforescribed lease of 3,762 square feet of County owned office space on the 3<sup>rd</sup> floor of 150 Washington Avenue to Shelby County Employees Federal Credit Union for its use in conducting regular, usual and customary business of a credit union, under the terms and conditions stated in the aforescribed Lease Agreement be and the same is hereby approved.

**BE IT FURTHER RESOLVED, That the Mayor be and he is authorized to execute**

**the attached Lease Agreement and any other documents necessary to effect the lease of said 3,762 square feet of County owned office space to Shelby County Employees Federal Credit Union for the aforementioned purpose.**

**BE IT FURTHER RESOLVED,** That the lease rental payments from this lease for the initial term totaling \$ 120,000.00 and from the renewal term totaling \$ 150,000.00 shall be credited to Revenue Account No. 010-307501-4551, Rental Income.

**BE IT FURTHER RESOLVED,** That this Resolution shall take effect from and after the date it shall have been enacted according to due process of law, the public welfare requiring it.

\_\_\_\_\_  
A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_

## **SUMMARY SHEET**

### **I. Description of Item**

Shelby County owns certain improved real property known as 150 Washington Avenue, located within the City of Memphis, Shelby County, Tennessee. The County has terminated the lease arrangement with Shelby County Employees Federal Credit Union for the 4,862 square feet of office space it occupied on the 4<sup>th</sup> floor of 157 Poplar Avenue, in an effort to vacate the building for subsequent demolition. To better serve County employees, the Shelby County Employees Federal Credit Union has requested the County to lease it 3,762 square feet of County owned office space on the 3<sup>rd</sup> floor of 150 Washington Avenue for its use in conducting regular, usual and customary business of a credit union for an initial term of five (5), with the option to extend the initial term for one (1) renewal term of five (5) years, at an initial term rent in the amount of \$120,000.00 and at a renewal term rent in the amount of \$150,000.00, under the terms and conditions stated in the attached Lease Agreement. Based on the above, it is hereby recommended by the Administration that this Agreement be approved.

### **II. Source and Amount of Funding**

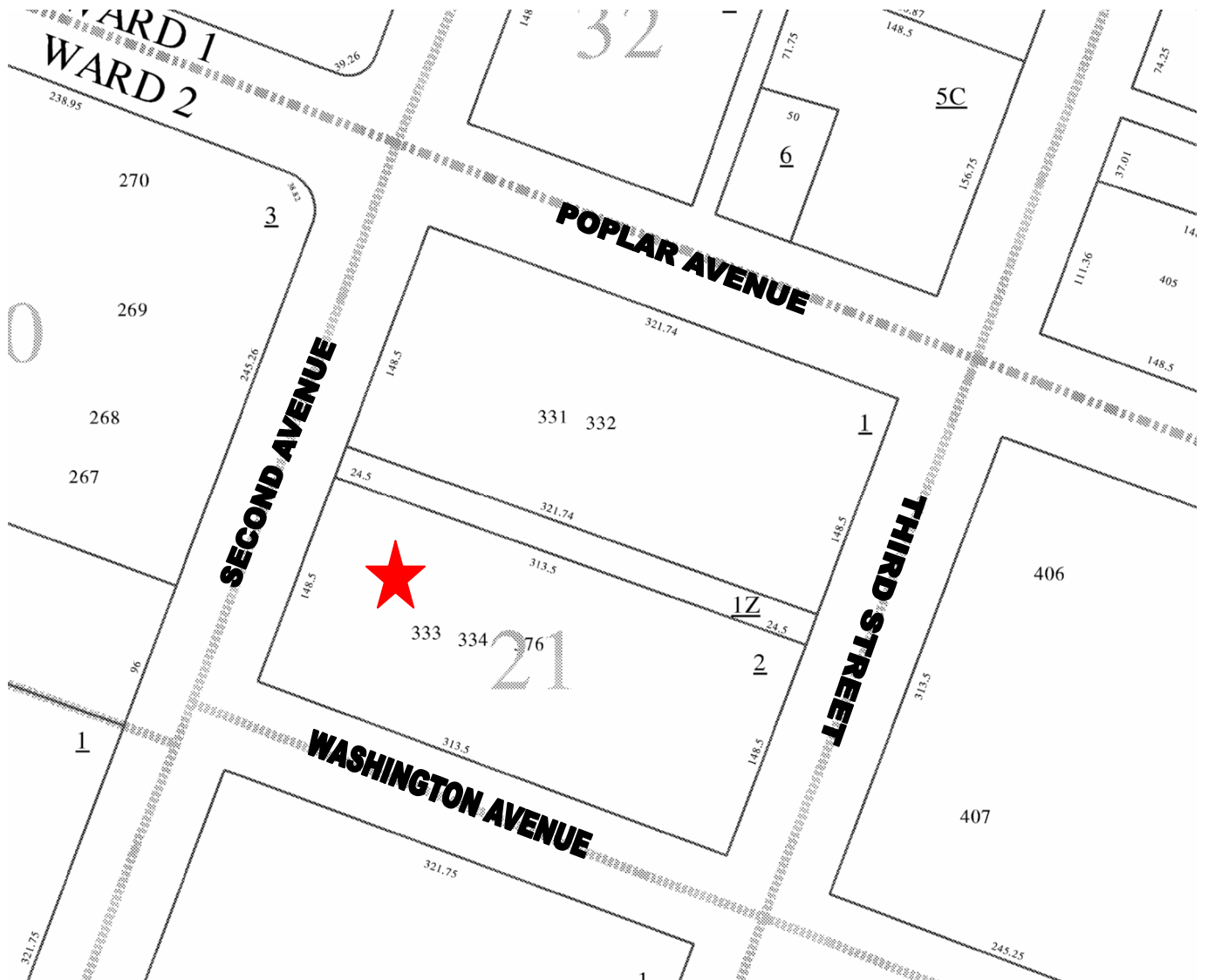
No county funds required.

### **III. Contract Items**

Lease Agreement

### **IV. Additional Information Relevant to Approval of this Item**

## Tax Parcel No. 00202100002



# **LEASE AGREEMENT**

**THIS AGREEMENT** is made and entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2009, by and between **County of Shelby**, a political subdivision of the State of Tennessee (“LESSOR”), and **Shelby County Employees Federal Credit Union**, a corporation organized and existing under the laws of Tennessee (“LESSEE”).

1. Leased Premises. Lessor is owner of the land and improvements commonly known and municipally addressed as 150 Washington Avenue, in the City of Memphis, Tennessee (“Building”), and hereby leases to Lessee office space therein located on the 3<sup>rd</sup> floor, containing 3,762 square feet as specifically designated on plat attached hereto as Exhibit “A” and incorporated herein by reference (“Leased Premises”).

2. Acceptance and Use of Leased Premises. Lessee accepts the Leased Premises and acknowledges that the Leased Premises is taken without warranty of condition, suitability of use, or of any other matter. The Leased Premises shall be used by Lessee for the sole purpose of conducting the regular, usual, and customary business of a credit union (“Permitted Use”) in accordance with Lessee’s mission.

3. Term. The Term of this lease shall be for five (5) years, and shall commence on October 1, 2009, and end on September 30, 2014 (the “Term”).

4. Rent and Monthly Installments. Lessee shall pay to Lessor as Rent One Hundred Twenty Thousand and 00/100 (\$ 120,000.00) Dollars, which Rent shall be payable in equal monthly installations of Two Thousand and 00/100 (\$ 2,000.00) Dollars for the initial five (5) year term of the lease. The monthly installments shall commence the first day of the month starting on October 1, 2009 and continue to be due and payable on or before the first day of each succeeding calendar month during the term hereof.

All Rents shall be payable to Shelby County Government and mailed to:

Shelby County Government Department of Finance  
160 N. Main St., Suite 1150  
Memphis, TN 38103

5. Renewal Term. The parties to this Lease shall have the option to renew same for One (1) successive term of five (5) years upon written mutual consent of all parties, subject to the following terms and conditions:

- a) Lessee shall give Lessor written notice of Lessee’s intentions to exercise its option to renew the Lease for the successive five year term at least ninety (90) days prior to the date renewal term shall commence, if exercised.
- b) The renew term shall be on the same terms, covenants, and conditions as provided in this Lease.

- c) Lessee shall pay to Lessor as Rent for the renewal term One Hundred Fifty Thousand and 00/100 (\$ 150,000.00) Dollars, which Rent shall be payable in equal monthly installments of Two Thousand Five Hundred and 00/100 (\$ 2,500.00) Dollars for the five (5) year renewal term of the lease. The monthly installments shall commence the first day of the month starting on October 1, 2014 and continue to be due and payable on or before the first day of each succeeding calendar month during the renewal term hereof

6. Insurance: Lessee agrees, at its sole cost and expense, to maintain the following minimum insurance coverage and include Shelby County Government as an additional named insured party:

- 1) *Commercial General Liability Insurance* – minimum limit of \$1,000,000 per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$100,000 damage to rented premises/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. Shelby County Government will be named as additional insured. The insurance shall include coverage for the following:
  - a) Premises/Operations
  - b) Products/Completed Operations
  - c) Contractual
  - d) Independent Contractors
  - e) Broad Form Property Damage
  - f) Personal Injury
- 2) *Business Automobile Liability Insurance* – minimum limit of \$1,000,000 each accident for property damage and bodily injury. Coverage is to be provided on all:
  - a) Owned/Leased Autos
  - b) Non-owned Autos
  - c) Hired Autos
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability coverage for \$500,000 per accident.
- 4) *All-Risk Property Coverage* – on leased premises in a minimum limit of \$300,000. Shelby County Government will be named as additional insured.

Lessee shall furnish to Lessor at least annually and upon request, evidence of the payment of premiums on said policy, together with copies thereof. All such policies shall provide that no cancellation or termination thereof shall be effective unless thirty (30) days prior written notice of same is provided to Lessor.

7. Renovation, Maintenance and Repairs. Lessee shall not cause or permit any waste, damage or injury to the Leased Premises. Lessor shall be responsible for major maintenance items, including roofing and heat and air conditioning equipment, except for damage or abuse caused by Lessee. Lessor's determination of damage or abuse by Lessee shall constitute a final determination of same. Lessee shall maintain the Leased Premises in good repair and in a safe condition, and perform routine maintenance on the Leased Premises. All repairs shall be at least equal in quality to the

original work. Approval for proposed expansion and/or renovations to the building structure will be notified in writing to Lessor and subject to Lessor's written approval. All expansions and/or renovations to the building structure shall be done at Lessee's expense and shall become a part of the real property. Lessor agrees to make structural repairs and improvements by way of Shelby County Support Services prior to occupancy by Lessee. Lessee must notify Lessor and obtain prior written approval of any other proposed expansion and/or renovation to the building structure.

8. Utilities. Utilities associated with operation and use of the Leased Premises, including all electrical energy and demand charges, gas, water, sewer user fees and solid waste pick-up fees, shall be provided by Lessor at no cost to the Lessee. Lessee shall provide, at its own expense, all telephone services to the Leased Premises.

9. Lessor's Remedies in Event of Default. Any of the following shall constitute a default by Lessee under this Lease:

- (A) Lessee shall fail to pay any rent when due hereunder, or fail to perform or observe any of the covenants, agreements or obligations herein made or assumed by Lessee.
- (B) Lessee shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors
- (C) Lessee shall file a petition in bankruptcy or under any similar law or statute of the United States or any state thereof; or Lessee shall be adjudged bankrupt or insolvent in any such proceedings filed against Lessee.
- (D) A receiver or trustee shall be appointed for all or substantially all of the assets of Lessee.
- (E) An involuntary petition in bankruptcy is filed against Lessee and is not withdrawn, dismissed, stayed or discharged within sixty (60) days from the filing thereof.

In case of default as described above, Lessor shall have the right to the following remedies which are intended to be cumulative and in addition to any other remedies provided under Tennessee law:

- (A) Terminate this Lease, in which event Lessee shall immediately surrender the Leased Premises to Lessor. Lessee agrees to pay to Lessor on demand all reasonable costs incurred in connection with such termination and retaking of possession, including without limitation, court costs and attorney fees.
- (B) Retake possession of the Leased Premises by summary proceedings and relet the premises upon any reasonable terms. Reletting shall not be construed as an acceptance of a surrender of Lessee's leasehold interest.
- (C) Recover all damages of every nature and kind caused by Lessee's default which shall include without limitation any and all costs associated with reletting the premises, and reasonable costs and attorneys' fees relating to Lessee's default.

No waiver by Lessor of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Lessor's acceptance of the payment of rental or other payments hereunder after the occurrence of an event of default shall not be construed as a waiver of such default. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of Lessor's right to enforce any such remedies with respect to such default or any subsequent default. If it shall become necessary or appropriate for Lessor to employ or consult with an attorney concerning or to enforce or defend any of Lessor's rights or remedies hereunder, Lessee agrees to pay any reasonable attorneys' fees so incurred.

10. Right to Inspect Premises. Lessor or its agents shall have the right to enter the Leased Premises at reasonable times for the purpose of making inspections or repairs, and Lessee agrees to permit same without hindrance of any kind.

11. Mechanic's and Other Liens. Lessee shall have no authority, express or implied, to create or place any lien or encumbrance, of any kind or nature whatsoever upon the Leased Premises, and each such claim shall affect and each such lien shall attach to, if at all, only the leasehold interest granted to Lessee by this instrument which claim Lessee shall promptly satisfy and remove or bond off and duly dispose of.

12. End of Term. Lessee covenants that on the last day of the Term hereof it will peaceably and quietly leave and surrender the Leased Premises in the same or better condition as Lessee entered same. If Lessee, or any party claiming under Lessee, shall remain in possession of the Leased Premises after the expiration or earlier termination of the Term hereof, then the tenancy thereafter shall be from month to month and all of the terms and provisions of this Lease shall be applicable. No holding over by Lessee, whether with or without consent of Lessor, shall operate to extend this Lease for a period longer than one month, except as otherwise expressly provided.

13. Right of Termination. During the initial term of this Lease, neither of the parties hereto shall have the right to terminate this Lease without cause. However, during renewal term, either party may, with or without cause, terminate this Lease by giving thirty (30) days written notice to the other party before the effective date of termination.

14. Lessee's Obligation to Comply with Laws. Lessee agrees to comply with all laws, statutes, ordinances and regulations, now or hereinafter in force and applicable to the Leased Premises, or which require the performance of any duty by Lessor or Lessee with respect to the Leased Premises or any part thereof. Lessee also agrees to comply with any and all regulations and rules applicable to the Leased Premises issued by the Fire Marshall, or by any other body exercising similar functions, or insurance companies writing policies covering the Leased Premises which are now in force or hereafter may become applicable to the Leased Premises. Lessee shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of or be imposed because of the failure of Lessee to comply with this paragraph, and agrees to indemnify and hold Lessor harmless from all liability with reference to the same. Lessor and Lessee shall each promptly give notice to the other in writing at the notice address designated herein of any notice of violation it receives. Additionally the Lessee agrees to and acknowledges the following:

- a) The Lessee certifies that it is qualified or will take steps necessary to qualify to do business in



the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.

- b) The Lessee is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).

15. Indemnification. Lessee shall indemnify and hold Lessor harmless from and against any and all liabilities, losses, demands, debts, claims, expenses, costs, liabilities or obligations, made against the Lessor or against Lessor's title in the Leased Premises, arising from or relating to injury to any person or damage to any property caused by any act or omission of Lessee or its employees, agents, contractors, licensees or invitees or arising from or relating to the use, maintenance, occupation of operation of the Leased Premises.

16. Estoppels Certificates. Lessee agrees, from time to time and within ten (10) days after request by Lessor, to execute and deliver to Lessor, or Lessor's designee, a statement in recordable form certifying that this Lease is in full force and effect, that there are no uncured defaults by the Lessor or any rights of offset, counterclaim or deduction against Rent by Lessee, the date to which Rent has been paid, the unexpired term of this Lease and such other matters pertaining to this Lease as may be reasonably requested by Lessor.

17. Assignment or Subletting. Lessee shall not assign, transfer or encumber this Lease or any part thereof and shall not sublet, grant licenses, or allow any other occupant to come in with or under Lessee, nor shall Lessee permit this Lease or the leasehold estate hereby created to become vested in or owned by any other person, firm or corporation by operation of law or otherwise, except as hereafter provided for. The County shall have the right to approve in its sole discretion each proposed assignee or sub lessee on the basis of experience, reputation and financial strength. No subletting, assignment or transfer, shall be effective unless approved in writing by the County and shall not relieve the Shelby County Credit Union from performance of its duties under this Agreement

18. Notices. All notices required or provided for under this Lease shall be given in writing by personal delivery, overnight delivery service, or by registered or certified U.S. Mail, postage prepaid and addressed to the parties at the following addresses or such other addresses as the parties may give notice and such notice shall be deemed give upon receipt:

Lessor: Shelby County Government  
Contract Administration, 5<sup>th</sup> Floor  
160 North Main, Suite 502  
Memphis, TN 38103

And Shelby County Employees Federal Credit Union  
150 Washington Avenue, 3<sup>rd</sup> Floor  
Memphis, TN 38103

19. Entire Agreement. This Lease sets out the understandings between the parties relative to the Leased Premises and there are no promises, agreements, conditions, understanding, inducements, warranties or representations, either oral or written, express or implied, between them other than as set forth in this Lease and this Lease shall not be modified in any manner except by a writing signed by both Lessor and Lessee.

20. Governing Law. This Lease shall be construed according to the laws of the State of Tennessee. By execution of this Contract, the Lessee agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Lease submit to the exclusive jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

21. Quiet Enjoyment and Covenant of Title. Lessor covenants that it has full right, power and authority to execute this Lease and to grant the estate demised herein, and that Lessee, upon payment of the rents herein reserved and performance of the terms, conditions and covenants herein contained with respect to Lessee, shall peacefully and quietly have, hold and enjoy the Leased Premises during the full Initial Term of this Lease, and any renewal or extension hereof, from the adverse claims by all persons, parties, or entities claiming through or as a result of Lessor.

22. Successors and Assigns. This Lease shall be binding on all parties hereto and their respective successors, assigns, heirs and executors, administrators and legal representatives and shall inure to the benefit of the parties hereto and their respective successors, permitted assigns, heirs and executors, administrators and legal representatives.

23. Waiver or Estoppels. Lessor's failure to insist, in any one or more instances, upon strict performance of any covenants, conditions or agreements of this Lease shall not constitute a waiver of future enforcement of the covenants, conditions or agreements.

24. Invalidity. If any provision of this Lease shall be held to be invalid, whether generally or as to specific facts or circumstances, the same shall not affect in any respect whatsoever the validity of the remainder of this Lease, which shall continue in full force and effect. Any provision held invalid as to any particular facts and circumstances shall remain in full force and effect as to all other facts and circumstances and any invalid provision, if invalid because it transcends applicable limits of law shall be deemed ipso facto to be reduced to such permitted level or limit.

25. Notice of Open Records. Notwithstanding anything to the contrary contained herein or within any other document supplied to Lessee by the Lessor or from the Lessee to the Lessor, Lessee acknowledges and understands that Lessor is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to Lessor by Lessee pursuant to the Lease shall be the property of Lessor and is subject to being divulged as a public record in accordance with the laws of the State of Tennessee.

26. Non-Discrimination. The Lessee hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the

employment practices of the Lessee on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The Lessee shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

27. Subject to Funding. This Lease is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Lease are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Lease will be terminated. In the event of such termination, the Lessee shall be entitled to receive just and equitable compensation for any relocation related expenses.

28. Matter to be Disregarded. The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Lease.

29. Independent Status. Nothing in this Lease shall be deemed to represent that the Lessee, or any of the Lessee's employees or agents, are the agents, representatives, or employees of Shelby County government. It is further expressly agreed and understood by Lessee that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of Shelby County Government.

**IN WITNESS WHEREOF**, this Lease has been executed by the parties as of this \_\_\_\_ day of \_\_\_\_\_, 2009.

**LESSEE:**

**Shelby County Employees Federal Credit Union**

By: \_\_\_\_\_  
Lin Winkler, Administrator

**LESSOR:**

**Shelby County Government**

By: \_\_\_\_\_  
A C Wharton, Jr., Mayor

**Approved as to Form:**

\_\_\_\_\_  
Assistant County Attorney/  
Contract Administrator

**Other County Approvals:**

\_\_\_\_\_  
County Real Estate Manager

\_\_\_\_\_  
Land Bank Administrator

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared **A C WHARTON, JR., Mayor of Shelby County, Tennessee**, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be **Mayor** of Shelby County, Tennessee, the within named bargainor, one of the counties of the State of Tennessee, and that he as such **Mayor**, of said county, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of Shelby County, Tennessee, by himself as **Mayor** of said Shelby County, Tennessee.

**WITNESS** my hand and official seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

My Commission Expires  
\_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF SHELBY

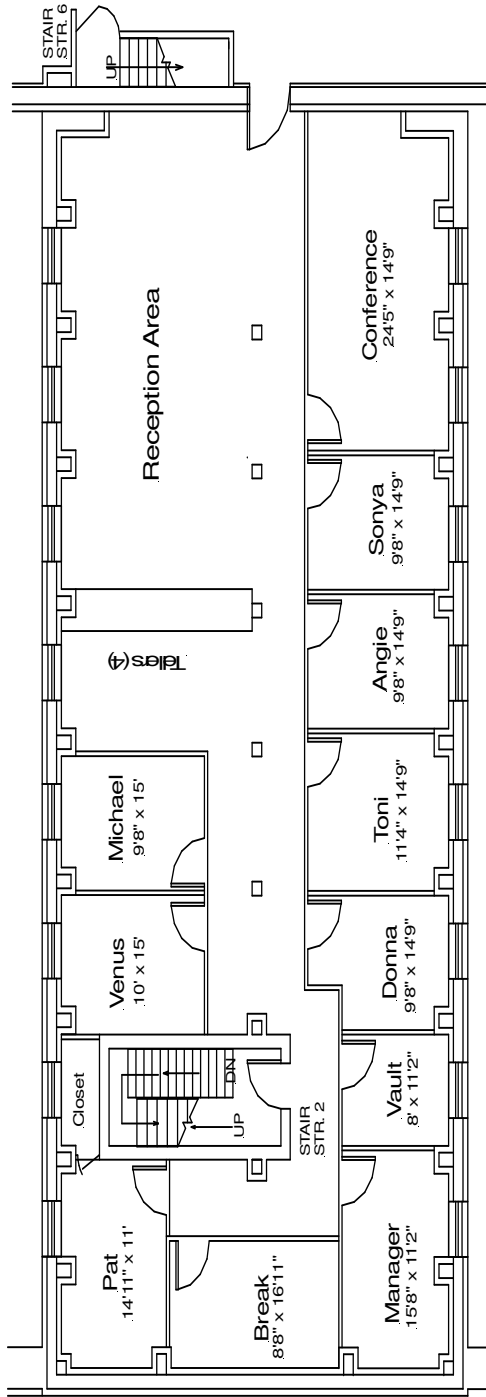
Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared **LIN WINKLER**, with whom I am personally acquainted, and who, upon oath, acknowledged herself to be **Administrator**, of the **Shelby County Employees Federal Credit Union**, the within named bargainor, a corporation of the State of Tennessee, and that she as such **Administrator**, of said corporation, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by herself as **Administrator**.

**WITNESS** my hand and official seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

My Commission Expires  
\_\_\_\_\_

EXHIBIT "A"



Archives Building  
150 Washington Ave.  
Third floor (West)

Sheet Title:

13Proposed  
Credit Union

1/16" = 1'

Sep 08